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SUBJECT: WSIS PREPCOM III MEETS IN GENEVA; LEAVES KEY ISSUES UNRESOLVED

1. Summary: The third meeting of the Preparatory Committee (PrepCom III) for Phase II of the World Summit on the Information Society (WSIS) took place in Geneva, Switzerland on September 19) 30, 2005. Over 1,900 participants attended the PrepCom including 1047 delegates representing 152 states and the European Commission. UN agencies, international organizations, private sector and civil society organizations also participated. Major issues from the PrepCom remain unresolved and negotiations will continue during the intersessional period and a resumed PrepCom III scheduled for the three days prior to WSIS, in Tunisia. The issue of Internet governance was particularly contentious with the EU moving to the extreme and proposing an alternate model of management with a high degree of government involvement. WSIS implementation and follow-up also remain unresolved with debate centering around which UN body should coordinate implementation. Many freedom of expression issues, stemming from Cuban proposals, and debate on financial mechanisms from PrepCom II also remain open.

2. The output of the Tunis Phase will be a non-binding document comprising a political part (political chapeau) and an operational part. The operational part will consist of four chapters: 1) implementation; 2) financing; 3) Internet governance; and 4) the way ahead. PrepCom III focussed on the political chapeau, chapters 1, 3 and 4 and the unresolved portions of chapter 2 remaining from PrepCom II. Ambassador David Gross, EB/CIP, led the U.S. delegation which included Assistant Secretary of Commerce for Communications and Information/Administrator of NTIA, Michael Gallagher and representatives of State (EB/CIP, EB/CBA IO, DRL, PM, L/EB, Mission Geneva), USAID, DOC/NTIA, DOC/PTO, Library of Congress, Institute of Museum and Library Services, DOJ, and NASA. End Summary.

Key Issues:

Internet Governance

3. The primary issue of PrepCom III was Internet governance. During Phase I of the WSIS, participants discussed Internet governance and adopted a series of principles. To further the discussion, the various WSIS stakeholders asked the UN Secretary General to convene a working group to consider the

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issue further and to prepare a report in time for discussion at the September PrepCom. The working group released its report in July and asked stakeholders to comment. The U.S. delegation submitted views founded primarily on the Administration's principles with respect to the Internet, s Domain Name and Address System (DNS) as well as long standing U.S. policy on general Internet issues.

4. The Internet governance debate during the PrepCom focused on a number of key issues. First, prepcom participants debated the role of the various stakeholders (governments, civil society, and private sector). The U.S. argued firmly that the success of the Internet is due, in large measure, to the unfettered ability of the Internet community throughout the world to innovate and add economic value at the edges of the network. A number of countries, in contrast, supported a stronger role for governments in both the technical and policy aspects of the Internet. This discussion quickly moved into a debate over whether governmental oversight of the Internet is needed. While most delegations agreed, in principle, that governments ought not to be involved in the day-to-day management of the Internet, there are great differences in what is perceived to be part of the technical management versus public policy.

5. Second, there was an ongoing debate about the nature of change in Internet management) whether this change should be evolutionary or whether a more revolutionary approach is warranted. Those favoring an evolutionary approach supported permitting technological change within existing systems. Supporters of a revolutionary change are seeking to uproot the current system and develop a new mechanism for Internet management, which would then be sent to the UN to oversee. Supporters of evolutionary change differed on whether governments should drive change through additional processes

and mechanisms or whether the evolutionary change should be driven primarily by the technology and new innovation.

16. Third, several delegations expressed dissatisfaction that a single government, the United States, has an essential role in the management of the Internet, specifically the role by the Department of Commerce in authorizing changes or modifications to the authoritative root zone file of the DNS.

Various formulations were offered as to how to multilateralize this role. The U.S. defended its unique role in the system and reiterated the U.S. commitment to doing its part to ensure the long-term stability and security of the Internet.

17. Lastly, discussions focused on whether or not there was a need to develop some sort of forum to continue the debate on Internet governance issues broadly. While most delegations agreed that dialogue should continue, disagreements persisted over the terms of reference for such a forum. Some governments such as the U.S. and Australia articulated a preference to use existing institutions while others called for the creation of a new organization to fulfill the role.

18. In a surprise move toward the end of the PrepCom, the EU presented a proposal that would transfer much of the Internet's management, both technical and policy-related, to an intergovernmental oversight body. Iran, Cuba, Brazil, China and Saudi Arabia, who have long argued for greater intergovernmental control of the Internet, promptly supported this proposal. Argentina, with support from Canada, New Zealand, Singapore, Mexico and others, tabled an alternative proposal that focused on the need to strengthen and improve existing institutions, and which called for a forum to address public policy issues. The U.S. has expressed interest in the Argentine proposal.

19. While prepcom participants tentatively agreed on introductory text on the role of stakeholders and some issue-specific text, they did not reach consensus on issues related to the authoritative root zone file, Internet oversight or a new forum dialogue. The Subcommittee chairman produced a text that sought to bring together the various proposals. The Chair's proposal, coming at the end of the PrepCom, did not help the negotiations; indeed it established another element that further confused future negotiations. This document has no status and is not considered a baseline text by the U.S. The issue of Internet governance will be discussed further during the resumed PrepCom III in Tunis.

10. Additional Internet governance issues include:
international charging arrangements for Internet services,
cybersecurity, cybercrime, spam:

(a) International Charging Arrangements for Internet Services (ICAIS)

In the context of measures to promote development, disagreements persisted over the need for governments to impose a cost-sharing model on interconnection arrangements between Internet Service Providers (ISPs), similar to the model used in traditional international voice telecommunications. The U.S. continued to advocate that arrangements for Internet services should continue to be negotiated commercially and governments should rely on technology and market forces to support expansion of the Internet and should not intervene in the process. Text was agreed that supports: the commercial nature of these negotiations; the continued development of regional Internet Exchange Centers; the development of low cost terminal equipment; and the completion of ITU work on this issue. A proposal originally tied to existing multilateral trade rules remains bracketed due to ambiguity in drafting.

(b) Cybersecurity

Russia proposed language on security for the political chapeau based on that in paragraph 36 of the Geneva Declaration of Principles. In corridor discussions, the U.S. worked with Russia to modify that language, which they accepted, but Iran, Cuba and El Salvador proposed additional sentences drawn from paragraphs 35 and 36 on social and economic development and human rights. While all parties had indicated acceptance for the language, Russia and Cuba placed the paragraph in brackets. Upon review, the U.S. will propose inclusion of language on the culture of cybersecurity, drawn from paragraph 35, to rebalance the compromise between paragraphs 35 and 36 reached in the Geneva Declaration of Principles.

Much of the U.S. proposed language on cybersecurity in other sections was agreed upon. The agreed language promotes a culture of cybersecurity, with specific mention of information sharing to develop common standards and exchange of best practices. In addition, the language highlights the importance of promoting cybersecurity while respecting privacy and human rights.

(c) Cybercrime

Prepcom participants agreed to the core U.S. language with a call for governments to adopt domestic legislation on cybercrime, taking into account existing frameworks. In addition, there is a specific acknowledgment of the Council of Europe's Convention on Cybercrime as an existing framework for fighting cybercrime. However, the last sentence of new paragraph 61 is still in brackets as requested by the Russian Federation. This sentence focuses on the need for international cooperation on cybercrime enforcement efforts, but avoids a call for any new international agreement on cybercrime.

(d) Spam

The core U.S. language was agreed to at PrepCom III. Pursuant to U.S. policy, the language explicitly acknowledges the London Action Plan, among other multi-lateral memoranda of understanding, and calls for a multi-pronged approach to counter spam that includes policy elements promoted by the U.S. (consumer and business education; appropriate legislation; law enforcement authorities and tools; continued development of self-regulatory and technical measures; best practices; and international cooperation). In addition, the language avoids a call for a global agreement on spam.

WSIS Implementation

11. The issues of coordination and implementation of the outcomes of the WSIS remained highly contentious. Many States at the PrepCom want the WSIS to designate specific UN agencies to carry out specific tasks related to the WSIS outcomes, want the WSIS to specify those tasks and want the ITU, UNESCO and UNDP to play a leading role in WSIS coordination and implementation. These States include Venezuela, Saudi Arabia, Cuba, Russia, El Salvador, Ghana, Iran, Azerbaijan, Brazil, Nigeria and the Dominican Republic. The U.S., the European Union (represented by the UK), Norway, Australia and Canada contend that it is not up to the WSIS to designate the tasks of UN agencies and that coordination on implementation should be carried out through the UN Secretary General within the context of the existing framework of UN coordination under UNGA Resolution 57/270B (on integrated and coordinated implementation of and follow up to the outcomes of the major United Nations conferences and summits in the economic and social fields) and within existing UN mandates and resources. An extensive debate on this issue was conducted over the course of several days in PrepCom Subcommittee B (chaired by Lyndall Shope-Mafole of South Africa) and the attending States were unable reach agreement on the issue. The issue of WSIS implementation is inextricably linked to the issues related to Internet governance and is unlikely to be settled until the issue of Internet governance is resolved within the WSIS.

Political Issues

12. Freedom of Expression/Role of Media/Unilateral Measures Language: The U.S., EU, Canada and Australia expressed strong support repeatedly for reaffirming the commitment made to human rights in the Geneva Declaration of Principles, without reopening the language. However, proposals made primarily by Cuba attempted to reopen language rejected in Phase I instead of utilizing negotiated language already agreed. This was particularly the case regarding references to the removal of obstacles in the Political Chapeau and the Implementation chapters of the Summit document(s) that were geared to evoke criticism of the U.S. embargo and/or U.S. media transmissions to Cuba (Radio/TV Marti). Cuba also continued to press for inclusion of paragraphs on the role of the media and the new world information and communication order that are unacceptable to the U.S. and other like-minded nations. Although the U.S. delegation was able to whittle the Cuban proposals down from many paragraphs to a more limited number, the end result is that all such language remains bracketed in the text. Cuba is committed to operationalizing paragraph 46 of the Geneva Declaration (on unilateral measures) and paragraph 45 of that Declaration (on legality of management of the radio frequency spectrum). Twice Cuba agreed to and then reneged on negotiated language on those issues. Agreement remains a major challenge prior to Tunis.

Financial Mechanisms

13. Chapter Two on Financial Mechanisms was substantially agreed at PrepCom II. However, due to lack of time, the few remaining bracketed passages were never brought to the Committee for final agreement.

Open Source

14. Paragraphs on open source software (OSS) remain open. Brazil proposed the addition of the original "Rio Commitment," reflecting Brazil's (and GRULAC's) promotion of

open source software (OSS) over proprietary software products. Ghana, speaking for the African Group, also supported this proposal. The U.S. opposed the addition in that it lacked the requisite technology neutrality previously recognized in the Geneva Declaration of Principles and has proposed technologically neutral language with which Brazil, GRULAC, and Ghana have indicated they could agree. The U.S. resisted Brazil's attempts to move the technologically neutral language within the paragraph, which would have resulted in promotion of OSS over proprietary software. It appears that all parties are willing to agree to the U.S.' original suggested placement of the language. Brazil also had communicated its desire to eliminate all other references to OSS anywhere in the final document, in favor of the one reference to OSS in the Political Chapeau. This possibility remains an open issue, however, as other references to OSS already were the subject of working group drafts. Drafting group participants have not completed work on all the paragraphs concerned. Australia favored dropping Brazil's proposal altogether, with which the U.S. would agree. Ghana has indicated to the U.S., however, that it needs this provision on OSS in the Political Chapeau to support its development agenda.

Technology Transfer

¶15. Technology transfer continues to be an open issue, although it is not expected to be a fractious one in that there appears to be general agreement to modify the phrase with "on mutually agreed terms" or similar modifications such as "enabling environment." Initial clashes with Saudi Arabia and Egypt over inclusion of "with mutually agreed terms" were resolved through several meetings of the drafting group, in which the U.S. pointed to similar references in the Geneva Declaration of Principles and the Plan of Action and the parties were able to address their disagreement through the inclusion of the phrase "enabling environment."

Cultural diversity

¶16. Several paragraphs relating to cultural diversity/the diversity of cultural content and artistic expression appear in the political chapeau. The U.S. agreed to language on &respecting cultural and linguistic diversity⁸ in paragraph 13; however, debate remains open on paragraph 35 around language on the &promotion and protection of cultural diversity and identity,⁸ which the U.S. does not support. A working group of Egypt, Ghana, Honduras and the U.S. proposed an alternative, which removed reference to protecting cultural diversity, which Egypt later rejected. The working group reconvened with the EU, Australia and Guatemala also participating to develop the following language which will be submitted at the intersessional PrepCom meeting: &We reaffirm our commitment to promoting the involvement of all peoples in the information society through the development and use of local languages in ICTs, thereby promoting, affirming, and preserving diverse cultural identities and languages.⁸

Tunisia

¶17. At the closing plenary of the WSIS PrepCom III, the issue of respect for human rights resurfaced in a dramatic way. The Canadian delegation read a statement on behalf of the EU, Romania, Bulgaria, Croatia, Serbia/Montenegro, Switzerland, Norway, New Zealand, Iceland, Monaco, Australia and the U.S. that emphasized, while their governments are dedicated to achieving a successful WSIS Summit in Tunis, they remain deeply concerned about the human rights situation in Tunisia, particularly with recent incidents and issues involving limitations on freedom of expression and participation by some groups of Tunisian civil society. The statement noted that they expected Tunisia to demonstrate its commitment to freedom of expression and opinion as host of the Summit.

¶18. Tunisia responded vehemently by saying that it had spared no effort to make WSIS a success and that it had provided the conditions for an open and inclusive summit, in line with the UN rules and procedures. The GOT also said there was no reason for further concern and that there was no reason to raise this issue at the Plenary and that it regretted hearing such a statement.

¶19. Saudi Arabia (on behalf of the Arab Group), Pakistan (on behalf of the Asia Group), Ghana (on behalf of the Africa Group), and Cuba spoke in support of the Tunisian efforts to hold a successful summit. Saudi Arabia, in particular, deplored that this issue was raised in Plenary. ITU Secretary General assured the Plenary that the UN rules would

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apply to the Tunis Summit and that the inclusive nature of WSIS would be upheld. He claimed that the host country agreement, just signed by Tunisia and the ITU, will ensure the openness of the summit, in accordance with the UN rules.

The tension surrounding the issue was clear and the dividing lines in the plenary hall were evident.

Accreditation

20. Contentious human rights issues served as the bookends for PrepCom III, opening and closing the meeting. During the opening plenary, the United States raised the issue of the accreditation of U.S.-based NGO Human Rights in China (HRIC) and requested an explanation from the WSIS Secretariat as to why HRIC was not accredited for this meeting, given they had submitted all necessary paperwork, including audited financial statements showing they received no government support. This concern was echoed by Canada and the UK on behalf of the EU. Following the Secretariat's explanation that HRIC was denied accreditation because it failed to disclose information about its anonymous donors, the U.S. moved that the HRIC be accredited. A lengthy procedural discussion followed in which China strongly objected, stating that discussing a single NGO after the Secretariat had not recommended their accreditation would break with standard procedures and that all NGOs rejected for accreditation could also need to be discussed. China raised a procedural point that the PrepCom should not take up the discussion of NGOs not recommended for accreditation by the Secretariat. In an intervention, Cuba supported this position.

21. Ambassador Karklins, President of the PrepCom, proposed postponing the discussion on HRIC to allow time for greater examination of the issue and to save precious plenary time. However, China expressed concern that, by doing this, a precedent would be set and also argued that HRIC does not work for the protection of human rights in China. China then called for a roll call vote on its proposal to not discuss the issue of NGOs denied accreditation. Acknowledging that there was no guiding precedent in WSIS for this issue, Ambassador Karklins called a roll call vote with the following results: 52 countries supported China's proposal, 35 voted in favor of discussing the accreditation issue, 35 countries abstained and 70 countries were declared absent, primarily because they chose not to respond to the roll call (many of them were in the room). Following the vote, which prevented the U.S. motion to accredit HRIC from being considered, the U.S. expressed disappointment that the WSIS process would not be as transparent and inclusive as the U.S. had hoped.

Conclusion/Comments

22. PrepCom III will be remembered as the international meeting where the EU dramatically shifted its support from the current system of Internet Governance to one it has characterized as a new cooperation model.⁸ In so doing, the EU not only moved away from supporting a system it was instrumental in helping to create but in so doing, it clearly appeared to rebuke the U.S. and its historic role in the management of the Internet system. This dramatic shift -- reflecting the views of Commissioner Viviane Redding -- is in sharp contrast to the policies advocated by her predecessor Commissioner Erkki Liikonen. The summit will now be remembered for the outcome of the US/EU differences over Internet Governance. Consequences of these differences, and how they will be dealt with at the Summit, will echo across a number of upcoming international meetings, particularly during the ITU's Plenipotentiary Conference to be held in Turkey in November 2006.

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